

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ST. LOUIS,	§	
	§	No. 446, 2004
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware, in and
v.	§	for Sussex County, in S00-09-
	§	0541-R1, 0542-R1.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0009015005

Submitted: December 13, 2004

Decided: March 1, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 1<sup>st</sup> day of March 2005, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, James St. Louis, has appealed the Superior Court's denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of St. Louis' opening brief that the appeal is without merit. We agree and affirm.

(2) In May 2001, a Superior Court jury found St. Louis guilty of Rape in the First Degree and Continuous Sexual Abuse of a Child. The Superior Court sentenced St. Louis to forty years at Level V incarceration, suspended after twenty-two years. On direct appeal, this Court affirmed St. Louis' conviction and sentence.<sup>1</sup>

(3) In May 2003, St. Louis filed a motion for postconviction relief under Superior Court Criminal Rule 61. St. Louis alleged numerous grounds for relief, including (a) violation of due process rights, (b) unsworn submissions, (c) improper admission of videotape under title 11, section 3507 of the Delaware Code,<sup>2</sup> (d) violations of title 11, sections 3508 and 3509 of the Delaware Code,<sup>3</sup> (e) violation of title 11, section 3511 of the Delaware Code,<sup>4</sup> (f) improper jury view of videotape, (g) improper introduction of prior bad act

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<sup>1</sup>*St. Louis v. State*, 2002 WL 1160979 (Del. Supr.).

<sup>2</sup>Title 11, section 3507 of the Delaware Code provides that “[i]n a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.”

<sup>3</sup>In a prosecution for any degree of rape and other named sexual offenses, title 11, sections 3508 and 3509 of the Delaware Code govern the sufficiency and admissibility of evidence of the complaining witness' sexual conduct.

<sup>4</sup>Subject to the requirements of the section, title 11, section 3511 of the Delaware Code permits in any criminal case the use of videotaped testimony in lieu of live testimony by a live witness under the age of twelve years.

evidence, (h) prosecutorial misconduct and (i) ineffective assistance of counsel. By decision dated September 22, 2004, the Superior Court denied St. Louis' ineffective assistance of counsel claim on its merits and applied the procedural bar of Rule 61(i)(3) to deny the remaining claims.<sup>5</sup> This appeal followed.

(4) In his two-page opening brief on appeal, St. Louis does not specifically address his postconviction claims. Instead, St. Louis argues generally that the Superior Court abused its discretion when applying the procedural bar to deny him postconviction relief.

(5) We find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Court's well-reasoned decision dated September 22, 2004. The Superior Court carefully reviewed each aspect of St. Louis' ineffective assistance of counsel claim and properly determined either that trial counsel's performance was reasonable, or that St. Louis did not demonstrate that the alleged error on the part of his counsel was prejudicial.<sup>6</sup> On appeal, St.

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<sup>5</sup>Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred, unless the movant can establish cause for relief from the procedural default and prejudice from the violation of the movant's rights.

<sup>6</sup>To prevail on a claim of ineffective assistance of counsel, a claimant must establish that counsel's representation fell below an objective standard of reasonableness and that counsel's actions were prejudicial. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

Louis has not demonstrated, and the record does not support, that the Superior Court abused its discretion or otherwise erred when denying the ineffective assistance of counsel claim.<sup>7</sup>

(6) St. Louis' remaining postconviction claims were not raised on direct appeal. As a result, the claims were subject to the procedural bar of Rule 61(i)(3), as the Superior Court determined. St. Louis did not demonstrate in his postconviction motion, and he has not demonstrated on appeal, why the procedural bar should be excused.<sup>8</sup>

(7) We find it manifest on the face of the opening brief that the judgment of the Superior Court should be affirmed. The issues on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>7</sup>*See Zebroski v. State*, 822 A.2d 1038, 1043 (Del. Supr.) (reviewing denial of ineffective assistance of counsel requires review of record to determine whether competent evidence supports findings of fact and whether conclusions of law are not erroneous).

<sup>8</sup>Rule 61(i)(5) provides, in part, that the bar to relief in Rule 61(i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice